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October 19, 2016

**RECEIVED ON:**

**Via Certified Mail - Return Receipt Requested**

Managing Agent  
Blue Star Welding LLC  
6059 Guide Meridian Rd.  
Bellingham, WA 98226

OCT 25 2016

ORC

EPA Region 10  
Office of the Regional Administrator

**Re: SUPPLEMENTAL NOTICE OF INTENT TO SUE**

Dear Managing Agent:

We represent RE Sources for Sustainable Communities ("RE Sources"), 2309 Meridian St., Bellingham, WA 98225, (360) 733-8307. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter is to provide you with sixty days notice of RE Sources' intent to file a complaint, or amend its complaint in case no. 16-cv-1611-TSZ (W.D. Wash), against Blue Star Welding LLC ("Blue Star") under section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, for the violations described below.

This letter supplements our August 9, 2016 letter (hereafter the "Notice Letter"). Blue Star has violated and continues to violate the CWA (see sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342) by violating the terms and conditions of its NPDES Industrial Stormwater General Permit (ISGP), no. WAR000369 (hereafter "the permit"). See *Nw. Env'tl. Advocates v. City of Portland*, 56 F.3d 979, 986 (9th Cir. 1995) ("The plain language of [the CWA citizen suit provision] authorizes citizens to enforce *all* permit conditions"); *Alaska Cmty. Action on Toxics v. Aurora Energy Servs. LLC*, 765 F.3d 1169, 1171 (9th Cir. 2014) ("any violation of the permit's terms constitutes a violation of the CWA") (citing 40 C.F.R. § 122.41(a)).

In particular, Blue Star is in violation of the Condition S1.E.1 because it does not apply the permit's terms and conditions to the facility's groundwater discharges, including required inspections (Condition S7), and implementation of mandatory best management practices identified in the permit (Condition S3). Blue Star is also in violation of the permit because it fails to comply with any of the applicable requirements of the Underground Injection Control (UIC) regulations of Chapter 173-218 WAC. These violations occur each and every day.

ISGP condition S1.E.2 indicates that facilities that discharge to groundwater through an underground injection control well shall comply with any applicable requirement of the UIC regulations, Chapter 173-218 WAC. The permit defines underground injection control wells to include a "subsurface fluid distribution system" (WAC 173-218-030). See permit

Appendix 2. The regulation in turn defines "subsurface fluid distribution systems" to include "an assemblage of perforated pipes...intended to distribute fluids below the surface of the ground." WAC 173-218-030. Blue Star discharges contaminated industrial stormwater to groundwater through a subsurface fluid distribution system consisting of pumps and perforated pipes at its metal fabrication and repair facility located at 6059 Guide Meridian Road, Bellingham, WA 98226 (the "facility"), without complying with any of the applicable UIC regulations. Violations of these regulations are violations of the permit and enforceable by RE Sources under the CWA citizen suit provision.

Under WAC 173-218-020, Blue Star must use all known, available, and reasonable methods of prevention, control and treatment (AKART) to the discharge of fluids and waste fluids, including industrial stormwater, into waters of the state as authorized by RCW 20.48.010. "The concept of AKART applies to both point and nonpoint sources of pollution...the storm water manuals [] may be used as a guideline, to the extent appropriate, for developing best management practices to apply AKART for storm water discharges." WAC 173-218-030. Blue Star is in violation of these regulations by failing to implement AKART at the facility, and failing to develop best management practices (BMPs) consistent with the Department of Ecology's Stormwater Management Manual for Western Washington.

Under WAC 173-218-040(5)(b), the UIC well used by Blue Star is prohibited because it receives stormwater containing hazardous substances, including petroleum or petroleum products (*See* WAC 173-218-030), and because Blue Star's industrial stormwater does not meet the nonendangerment standard by applying the BMPs and requirements in WAC 173-218-090 or complying with the terms of the permit. On information and belief, Blue Star's UIC well does not meet the nonendangerment standard because Blue Star does not prevent the movement of stormwater containing contaminants into the groundwater that may cause a violation of water quality standards for groundwater. WAC 173-218-080. Moreover, Blue Star is not in compliance with RCW 90.48.010, 90.48.080, or 90.48.160, Blue Star is not in compliance with chapter 173-200 WAC water quality standards for ground waters of the state of Washington, and Blue Star has not constructed, operated or maintained the UIC well in a manner that protects groundwater quality as described in 40 C.F.R. 144.12(a), precluding Blue Star from meeting the nonendangerment standard. *Id.* On information and belief, Blue Star did not show compliance with the nonendangerment standard prior to placing its UIC well into service, or comply with the other requirements of WAC 173-218-090. As the owner and operator of a new Class V well used to manage stormwater, Blue Star needed to show compliance with the nonendangerment standard with either the "presumptive approach" or the "demonstrative approach," as defined at WAC 173-218-090(c). Blue Star has failed to comply with either approach for this required showing.

Under WAC 173-218-060, Blue Star must register its well and receive either rule authorization or a state waste discharge permit to operate the well. *See also* WAC 173-218-070; 218-110. On information and belief, Blue Star's UIC well is not registered and is not rule authorized or subject to a waste discharge permit specifically permitting operation of the well. Blue Star's operation of its UIC well is unlawful.

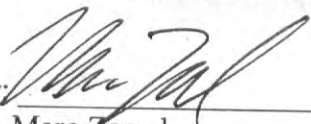
RE Sources believes it provided sufficient notice of these violations with its August 9 Notice Letter, but provides this supplemental notice to you out of an abundance of caution. The above-described violations reflect those indicated by the information currently available to RE Sources. These violations are ongoing. RE Sources intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Supplemental Notice of Intent to Sue.

Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$37,500 per day of each violation that occurred before November 2, 2015, and \$51,570 per day for each violation that occurred since. In addition to civil penalties, RE Sources will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 U.S.C. § 1365(d) permits prevailing parties to recover costs, including attorney's fees.

RE Sources believe that this SUPPLEMENTAL NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. WE intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Blue Star Welding LLC under Section 505(a) of the Clean Water Act for violations, or amend a complaint to incorporate these allegations.

Very truly yours,

SMITH & LOWNEY, PLLC

By:   
Marc Zemel

cc: Gina McCarthy, Administrator, U.S. EPA  
Dennis McLerran, Region 10 Administrator, U.S. EPA  
Maia Bellon, Director, Washington Department of Ecology  
Jerod Priebe, Registered Agent (6059 Guide Meridian Rd., Bellingham WA98226-9751)  
Jerod Priebe, Manager (6753 Lunde Rd., Everson, WA 98247)  
Holly Stafford, counsel (Chmelik, Sitkin & Davis P.S., 1500 Railroad Avenue, Bellingham, WA 98225)